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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/817,565

04/02/2004

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EXAMINER

CHU, GABRIEL L

ART UNIT

PAPER NUMBER

2114

MAIL DATE

DELIVERY MODE

06/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/817,565

Applicant(s)

DECENZO ET AL.

Examiner

Gabriel L. Chu

Art Unit

2114

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 30-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the **finality of that action is withdrawn.**

#### ***Special Examination Procedures***

2. According to MPEP 708.02 VIII (C), under special examining procedure of VIII, "Any amendment which would require broadening the search field will be treated as an improper reply." Further, see MPEP 708.02 VIII, under special examining procedure of VIII, wherein "The examiner's search will be restricted to the subject matter encompassed by the claims."

3. Therefore, **any amendment that broadens the claimed subject matter beyond Examiner's search will be treated as non-responsive.**

#### ***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. **Claims 30-34, 36-42, 44-46, 55, 56, 58 rejected under 35 U.S.C. 102(b) as being anticipated by US 2003/0041201 to Rauscher.** See previous office action.

6. **Claims 38, 39, 41, 47-49, 55, 56, 58, 59 rejected under 35 U.S.C. 102(e) as being anticipated by US 2004/0139260 to Steinmetz et al.** See previous office action.

7. **Claims 53 rejected under 35 U.S.C. 102(e) as being anticipated by US 20030126315 to Tan et al.** See previous office action.

8. **Claim 54 rejected under 35 U.S.C. 102(b) as being anticipated by US 6304942 to DeKoning.** See previous office action.

***Claim Rejections - 35 USC § 103***

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
10. **Claims 35, 43 rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0041201 to Rauscher as applied to claim 31, 39 above, and further in view of US 6598106 to Grieshaber et al.** See previous office action.
11. **Claims 50-52, 57 rejected under 35 U.S.C. 103(a) as being unpatentable over US 2004/0139260 to Steinmetz et al. as applied to claim 49 above, in further view of US 5898828 to Pignolet et al.** See previous office action.

***Response to Arguments***

12. Applicant's arguments filed 16 January 2007 have been fully considered but they are not persuasive.
13. Firstly, regarding Applicant's arguments for premature finality, Examiner concurs and has withdrawn finality. However, finality is reapplied as of this action.
14. Regarding Applicant's argument (page 9) that it is "wrong" to accuse Applicant of being its own lexicographer, there is no morality being applied here. It is merely a simple observation of factual occurrence corroborated by Applicant's own specification, e.g., the portions cited by Applicant in his arguments.

15. Regarding Applicant's argument (page 10 and 11) that the "plain meaning" of "common enclosure" is being denied by Examiner, and that it must mean only that it is the "same" enclosure and that it is "self-contained", see Rauscher's use of a rack. In order to overcome this rejection, Applicant must disclose, for example how Rauscher's rack is not "same" and "self-contained". Further, Applicant's citation further illustrates the expansive breadth of Applicant's claims by not even claiming what is already in the specification, although argued. Even so, Examiner notes that even if incorporated into the claims, such an unclaimed but disclosed embodiment would not be allowable because of its obviousness.

16. Regarding Applicant's argument (page 10) that Examiner "appears to be making a written description argument in a misplaced attempt at supporting the anticipation rejection", it is not clear how it is "misplaced" to use Applicant's intended meaning (the specification) in rejecting the claims. If Applicant so chooses to define the invention in such broad and unlimiting terminology, Applicant is free to do so within the bounds of USC 112, 1<sup>st</sup> and 2<sup>nd</sup> paragraph. However, Applicant will note that Examiner has made no rejection under those paragraphs. If Applicant finds Examiner's interpretation to be "unreasonably broad", then it is only because Applicant's specification is "unreasonably broad".

17. Regarding Applicant's argument (page 12) for "switchable fabric" using citations from Applicant's specification, Applicant will note the use of "may" (as noted previously), as well as "any type of device", "configurable connection" (which is merely a connection capable of being configured, which all connections are to at least some extent or in

some way, although notably, Applicant fails to note or claim how such “configuration” is limiting or achieved), and that it shall include “...switches... multiplexers... and other devices”. Examiner fails to see how the constructs presented by Rauscher do not meet such a broad and expansive definition. Rauscher, in providing a configurable communication architecture for connecting host/controllers and disks/locations, has provided a “switchable fabric”.

18. Regarding Applicant’s demand (page 13) that Examiner show evidence why Rauscher’s “unswitchable connectors” are a switchable fabric. Again, this is because this is how Applicant, in acting as his own lexicographer, has **defined** the term, and a plain meaning interpretation of the term. Furthermore, Applicant has made the false assumption that Rauscher’s connectors are “unswitchable”. Insofar as they are selectively configurable to provide connection, they are certainly “switchable”. Examiner puts forth that Applicant must show how Rauscher’s connectors are “unswitchable”. In so doing, Applicant should consider how Applicant’s claims do or do not reflect such a showing.

19. Regarding Applicant’s demand (page 14) that Examiner must show how Steinmetz’s “unswitchable connectors” are a switchable fabric, see argument above. Further, Examiner has specifically cited a portion of Steinmetz indicated “switchable” connectors such as “router”, FC arbitrated loop”, and “point-to-point links. Further, Applicant should read Steinmetz to determine if a more palatable “fabric” exists therein. Regardless, given, at least, the expansive breadth of the claim and Applicant’s specification, the rejection is maintained.

20. Regarding Applicant's argument (page 15) that Tan does not "identically" disclose the means for controlling as claimed in view of USC 112, 6<sup>th</sup> paragraph, Examiner has nowhere argued that Tan **exactly** discloses the claimed invention. It is not clear what Applicant believes "**equivalence**" entails, but given the means plus function language claimed by Applicant, Examiner has found means that provide **equivalent** functionality in Tan, bound by the **scope** of Applicant's specification. To the extent that structure has been claimed, structural **equivalence** has been provided.

Further, from MPEP 2182, "The next step in construing a means-plus-function claim limitation is to look to the specification and identify the corresponding structure for that function. "Under this second step, structure disclosed in the specification is "corresponding" structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim."

Further, in line with MPEP 2183, the cited art performs the function specified in the claim, is not excluded by any explicit definition in the specification for an equivalent (indeed the specification is quite broadly inclusive of most any element), and is an equivalent of the means plus function limitation. Additionally, the prior art performs the identical function specified in the claim in substantially the same way and produces substantially the same results as a hypothetical (see MPEP 2182) corresponding element in the specification. Furthermore, given the broadly claimed functionality, a person having ordinary skill in the art would have recognized the interchangeability of the elements as they achieve the same functionality, i.e., they are equivalent.

Further, from MPEP 2184, Applicant appears to be pursuing reason B in an

attempt to show that the prior art allegedly shows nonequivalence, e.g., “unswitchable”. However, merely declaring that an element is not identical is not the same as a factual showing of contradiction. Counter to Applicant’s argument, Examiner has shown that Applicant’s specification itself has shown equivalence by being broadly encompassing. Furthermore, see MPEP 2184 III.

21. Referring to Applicant’s argument (page 16) that DeKoning does not “identically” disclose “...at least two independent signal paths between each location and each controller”, from at least the portion cited by Examiner, DeKoning specifically discloses that the channels are redundant. To the extent that one channel is **redundant** to another, they are also independent. There is nothing in the claims that contradicts this interpretation, and furthermore, it is reasonable even in light of the specification. Applicant may overcome this rejection by providing a pertinent argument, keeping in mind whether or not the claims actually are commensurate with any such argument, or amending insofar as special examination procedures allow.

### ***Conclusion***

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the




shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabriel L. Chu whose telephone number is (571) 272-3656. The examiner can normally be reached on weekdays between 8:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Gabriel L. Chu  
Primary Examiner  
Art Unit 2114

Art Unit: 2114

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